

FORFEITURE JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury, in view of your verdict that Defendant Michael Kail is guilty of money laundering as charged in Count 24, you must now also decide whether he should surrender to the government his ownership interest in certain property as a penalty for committing that crime. We call this “forfeiture.”

Forfeiture Generally

In order for you to find that the property is subject to forfeiture, the government must prove both of the following elements by a preponderance of the evidence:

1. That the real property was “involved in” the offense in Count 24 or is “property traceable to such property” involved in that offense; and
2. That there is accordingly a nexus between the property alleged to be forfeitable and the offense giving rise to the forfeiture allegation.

This is different from the standard that applied to the guilt or innocence of the defendant. At that stage of the case, the government was required to meet its burden “beyond a reasonable doubt.” At this forfeiture stage, however, the government need only establish its proof by a “preponderance of the evidence,” which means that the government has to produce evidence which, considered in light of all of the facts, leads you to believe that what the government claims is more likely true than not true. To put it differently, if you were to put the government’s evidence and the defendant’s evidence on opposite sides of a balance scale, the government’s evidence would have to make the scale tip slightly on its side of the balance. If the government’s evidence fails to do this, then the government has not met its burden of proof. The defendant does not have the burden of proof and is not required to produce any evidence. You should base your decision on all of the evidence, regardless of which party presented it.

Property “involved in” a money laundering transaction means the money being laundered, any commissions or fees paid to the launderer, and any property used to facilitate the laundering. Property can be ‘involved in’ money laundering even if some of the money used to purchase the property was not the proceeds of criminal activity.

The Real Property

The particular property alleged for forfeiture is as follows:

- Real property and improvements at 234 Almendra Drive, Lost Gatos, 95030, in Santa Clara County, California, bearing Assessor's Parcel Number 510-14-016.

You are also instructed that what happens to any property that you find has the required nexus to the offense is exclusively a matter for the Court to decide. Similarly, any legal arguments concerning the forfeiture of the property will be taken into account by the Court at a later time. You should also disregard any third party's claim to the property and the value of the property. Your only job at this time is to determine whether the property alleged for forfeiture was "involved in" and has a sufficient nexus to Count 24, the money laundering count. The Court will decide those legal issues at a later date.

Consideration of Trial Evidence

While deliberating, you may consider any evidence admitted during the trial. However, you must not reexamine your previous determination regarding Mr. Kail's guilt of Count 24, money laundering. All of my previous instructions concerning consideration of the evidence, the credibility of witnesses, your duty to deliberate together and to base your verdict solely on the evidence without prejudice, bias or sympathy, and the requirement of unanimity apply here as well. I remind you that the lawyers' statements to you are not evidence.

Special Forfeiture Verdict Form

A Special Verdict Form for Forfeiture has been prepared for your use.

You may answer by simply putting an "X" or check mark in the space provided next to the words "Yes" or "No" in the space provided.

If you find from your consideration of all the evidence that the government has proved the elements by a preponderance of the evidence as to the real property you are considering, then you should check the "Yes" line on the Special Forfeiture Verdict Form.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove each or any one of the elements by a preponderance of the evidence as to the real property you are considering, then you should check the "No" line on the Special Forfeiture Verdict Form.

1 You will take the Special Verdict Form for Forfeiture to the jury room and when you have reached
2 unanimous agreement as to the real property, you will have your Presiding Juror fill in the form and notify
3 the Courtroom Deputy. The Presiding Juror must then sign and date the Special Verdict Form for
4 Forfeiture.
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